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December 19, 2003

**VIA HAND DELIVERY**

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
Portals II - 12th Street Lobby  
Filing Counter - TW-A325  
445 12th Street, SW  
Washington, D.C. 20554

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DEC 19 2003

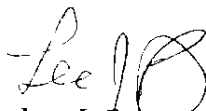
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: Petition for Reconsideration  
Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
(Shorter, Alabama)  
MM Docket No. \_\_\_\_  
RM-\_\_\_\_**

Dear Ms. Dortch:

Transmitted herewith, on behalf of Auburn Network, Inc., petitioner for an allotment on Channel 228A at Shorter, Alabama, is an original and four (4) copies of its Petition for Reconsideration with respect to the Commission action returning its Petition for Rule Making. Please contact the undersigned in the event the Commission has any questions with respect to this Petition for Reconsideration.

Sincerely,



Lee J. Peltzman  
Counsel for  
AUBURN NETWORK, INC.

Enclosure

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Before The  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of )  
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Amendment of Section 73.202(b) )  
Table of Allotments, )  
FM Broadcast Stations )  
(Shorter, Alabama) )  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MM Docket No. \_\_\_\_\_  
RM-\_\_\_\_\_

To: Assistant Chief, Audio Division  
Media Bureau

**PETITION FOR RECONSIDERATION**

Auburn Network, Inc. ("ANI"), by its attorney and pursuant to Section 1.429 of the Commission's rules, hereby requests that the Commission reconsider its letter action returning ANI's Petition for Rule Making, which sought the allotment of a new FM channel at Shorter, Alabama on Channel 228A.<sup>1</sup> In support of its position, ANI submits the following:

ANI filed a Petition for Rule Making on September 17, 2003, which sought to amend the Commission's FM Table of Allotments to allot a new FM radio channel at Shorter, Alabama on Channel 228A. ANI pointed out that Channel 228A can be allotted to Shorter, Alabama at coordinates 32-21-39 North Latitude, 85-53-34 West Longitude, provided that Station WDJC-FM, Birmingham, Alabama is reclassified from Channel 229C to Channel 229C0.

In its November 19, 2003 letter action, the Commission noted that Station WDJC-FM is subject to reclassification as a Class C0 facility because it currently operates on Channel 229C with an effective radiated power of 100 kilowatts at 307 meters height above average terrain ("HAAT") (below the minimum Class C antenna height requirement of at least 451 meters

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<sup>1</sup> The staff action occurred by letter, dated November 19, 2003, a copy of which is attached hereto.

HAAT). However, the Commission found the rule making proposal unacceptable for consideration because the Commission's engineering analysis revealed that use of the requested site at Shorter was allegedly improperly short-spaced to the proposed reclassification of Station WDJC-FM as a Class C0 facility, which could not be cured.

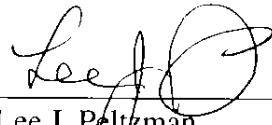
The Commission letter action should be reconsidered because it has reached the wrong conclusion based on an incorrect assumption. Contrary to the Commission's conclusion, the ANI Channel 228A Shorter, Alabama proposal is not short-spaced to the proposed reclassification of Station WDJC-FM as a Class C0 facility. Attached hereto is an engineering statement from Virgle Leon Strickland, which demonstrates that the correct coordinates for the WDJC-FM license site are 33-26-36 North Latitude, 86-52-51 West Longitude, which differs one second from those coordinates attributed to WDJC-FM in the Commission's engineering database and used by the Commission in reaching its conclusion that the Shorter proposal was short-spaced to WDJC-FM. The Shorter proposal is, in fact, in compliance with the FCC's spacing rules. See Attached Allocation Study for Channel 228, Shorter, Alabama.

Since the proposed site coordinates for the ANI Shorter proposal are not short-spaced to the correct coordinates for Station WDJC-FM, the Commission should reconsider its conclusion and accept the ANI rule making proposal and issue a Notice of Proposed Rule Making in this proceeding. Additionally, the Commission should require Station WDJC-FM to file a license application correcting its coordinates.

Accordingly, ANI respectfully requests the Commission to reconsider its action returning ANI's Petition for Rule Making and issue a Notice of Proposed Rule Making

Respectfully submitted,

AUBURN NETWORK, INC.

By:   
\_\_\_\_\_  
Lee J. Peltzman  
Its Attorney  
Shanis & Peltzman, Chartered  
1850 M Street, NW, Suite 240  
Washington, D.C. 20036  
Tel. 202-293-0011

Dated December 19, 2003



Federal Communications Commission  
Washington, D.C. 20554

November 19, 2003

Mike Hubbard  
President, Auburn Network, Inc.  
Post Office Box 950  
Auburn, AL 36831-0950

Dear Mr. Hubbard:

This letter refers to the petition for rule making you filed that requested the allotment of Channel 228A to Shorter, Alabama, as the community's first local aural broadcast service. In order to accommodate that allotment, you proposed to reclassify the license of Station WJDC(FM), Birmingham, Alabama to specify operation on Channel 229C0 in lieu of Channel 229C since the station is operating below the minimum Class C antenna height requirements of at least 451 meters height above average terrain ("HAAT").<sup>1</sup>

Although Station WJDC(FM) is subject to reclassification as a Class C0 facility because it currently operates on Channel 229C with an effective radiated power of 100 kilowatts at 307 meters HAAT, we have reviewed your proposal and find that it is unacceptable for consideration at this time. Our engineering analysis reveals that by using the requested site, (32-21-39 NL and 85-53-34 WL) Channel 228A at Shorter is short-spaced to the proposed reclassification of Station WJDC(FM) as a Class C0 facility and cannot be cured.

Therefore, we are returning your petition for rulemaking for the reasons discussed above. You may re-file your petition, provided it meets all of the requirements of Section 73.207(b)(1) of the Commission's rules.

Sincerely,

Joan A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

Enclosure

<sup>1</sup> See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, 15 FCC Red 21649 (2000), 47 C.F.R. § 1.420(g), n.2, and 47 C.F.R. § 73.3573, n.4.

A visit was made to the WDJC's transmitting facility tower site on Thursday, December 18, 2003 for the purpose of checking the licensed coordinates. Readings were made with a Garmin Global Positioning System (GPS) Model Geko 101. As described careful attention was demonstrated to assure the accuracy of the readings. The Garmin GPS (Geko 101) displays the readings in degrees, minutes and thousandth of minutes in NAD83. Each point read displays the reading made directly from the GPS, then converted to degrees, minutes and seconds in NAD83, and also converted to degrees, minutes and seconds in NAD27.

Readings were made at the licensed tower site of WDJC on the west side of the tower and on the south side of the tower, as depicted in the aerial photograph shown below as Figure 1.



Figure 1

**West Side Point Reading**  
**DD-MM.MMM (NAD83)**

33-26.609  
86-52.845

**West Side Point Reading**  
**DD-MM-SS.SS (NAD83)**

33-26-36.54  
86-52-50.70

**West Side Point Reading**  
**DD-MM-SS.SS (NAD27)**

33-26-36.15  
86-52-50.73

**South Side Point Reading**  
**DD-MM.MMM (NAD83)**

33-26.606  
86-52.844

**South Side Point Reading**  
**DD-MM-SS.SS (NAD83)**

33-26-36.36  
86-52-50.64

**South Side Point Reading**  
**DD-MM-SS.SS (NAD27)**

33-26-35.97  
86-52-50.67

The reading made on the west side of the tower demonstrates the Latitude and the reading made on the south side of the tower demonstrates the Longitude. Therefore, the coordinates of the WDJC tower is as follows:

**Derived Coordinates**  
**DD-MM-SS.SS (NAD27)**

33-26-36.15  
86-52-50.67

**Rounded Coordinates**  
**DD-MM-SS (NAD27)**

33-26-36  
86-52-51

Additional readings were made and plotted on a USGS 7.5 minute topographic map and each of those readings were likewise converted to NAD27 coordinates as before. The conversion is listed below and the plotted map is displayed as Figure 2.

<b><u>Intersection #1 Reading</u></b> <b><u>DD-MM.MMM (NAD83)</u></b>	<b><u>Intersection #1 Reading</u></b> <b><u>DD-MM-SS.SS (NAD83)</u></b>	<b><u>Intersection #1 Reading</u></b> <b><u>DD-MM-SS.SS (NAD27)</u></b>
33-26.341	33-26-20.46	33-26-20.07
86-52.951	86-52-57.06	86-52-57.09

Intersection #1 is the intersection of two (2) roads near the transmitter site of WDIC. Those coordinates were rounded, as listed below, and plotted on Figure 2.

**Rounded Coordinates**  
**For Intersection #1**  
**DD-MM-SS.SS (NAD27)**

33-26-20  
86-52-57

<b><u>Intersection #2 Reading</u></b> <b><u>DD-MM.MMM (NAD83)</u></b>	<b><u>Intersection #2 Reading</u></b> <b><u>DD-MM-SS.SS (NAD83)</u></b>	<b><u>Intersection #2 Reading</u></b> <b><u>DD-MM-SS.SS (NAD27)</u></b>
33-26.162	33-26-09.72	33-26-09.33
86-53.245	86-53-14.70	86-53-14.70

Intersection #2 is the intersection of the highway (Venice Road) and road leading to the transmitter site of WDIC. Those coordinates were also, as listed below, rounded and plotted on Figure 2.

**Rounded Coordinates**  
**For Intersection #1**  
**DD-MM-SS.SS (NAD27)**

33-26-09  
86-53-53

The plotting of intersections on Figure 2 demonstrates the accuracy of the work performed to determine the coordinates of WDIC.

All work and presentations was performed by Virgle Leon Strickland, whose work and qualifications are known by the staff of the Federal Communications Commission.

Virgle Leon Strickland  
Reynolds Technical Associates  
December 19, 2003

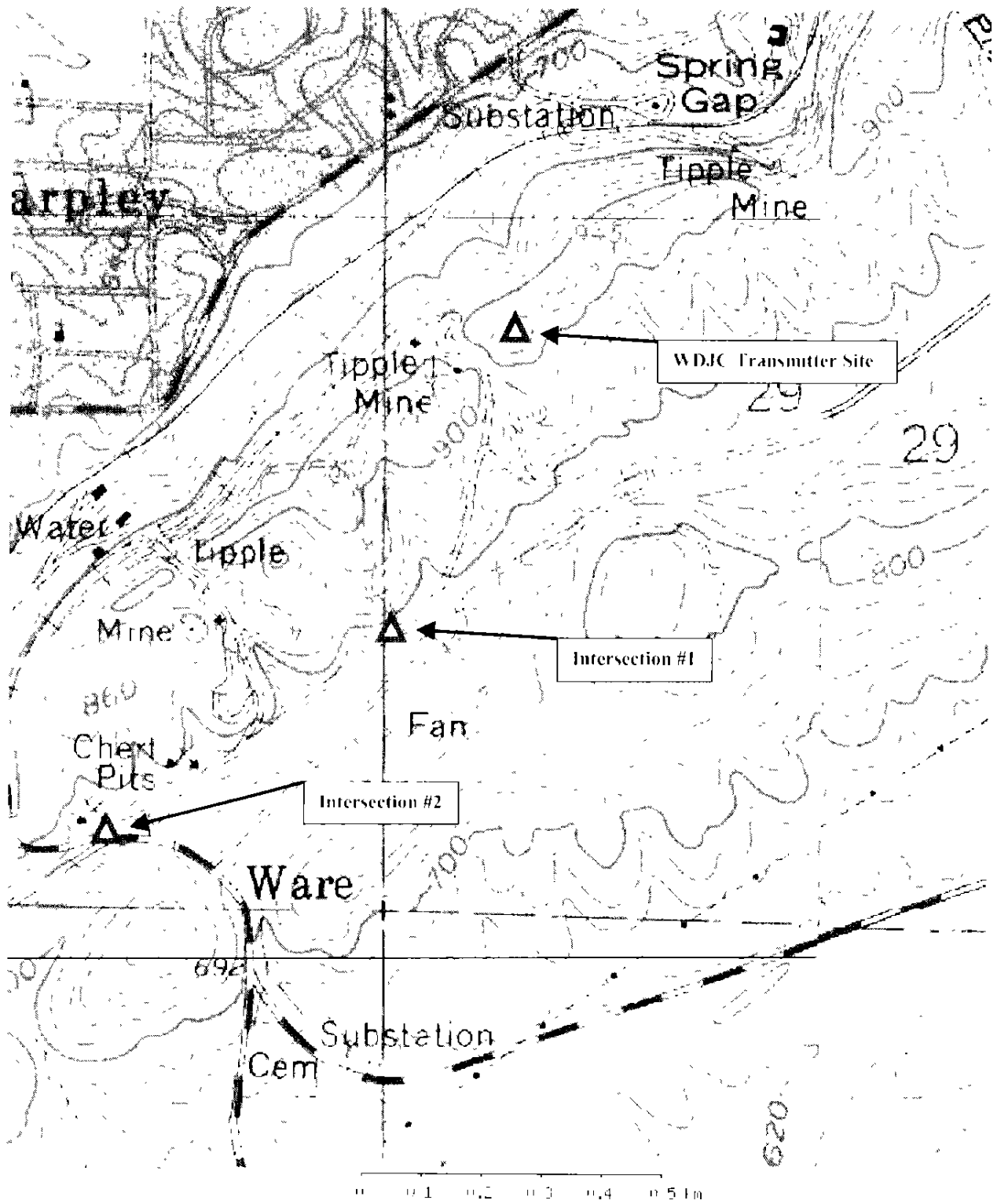


Figure 2



### Channel 228A, Shorter, Alabama

\* Coordinates modified to 33-26-36/86-52-51 (moved one second west) as a result of attached study performed

**CERTIFICATE OF SERVICE**

I, Karen D. McNeill, a secretary in the law firm of Shainis & Peltzman, Chartered, do hereby certify that I have on this 19<sup>th</sup> day of December, 2003, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Petition for Reconsideration" to the following

John Neely, Esq.  
Miller & Neely, P.C.  
6900 Wisconsin Avenue  
Suite 704  
Bethesda, MD 20815

  
Karen McNeill